

1 when I was watching.

2 JUDGE SIPPEL: Okay.

3 THE WITNESS: But I formed a lot
4 of observations. I stopped it and I thought
5 about it quite often and in fact, based on --
6 I found the Mojo-WealthTV exercise I had done
7 a few years ago informative here in helping,
8 really trying to think about all this.

9 JUDGE SIPPEL: We're relying a lot
10 on that case.

11 THE WITNESS: Is that right?
12 Okay. I know I did. And so I really wanted
13 to try to understand again, you know, when a
14 customer turns it on, what club are they
15 entering? What door are they going through
16 here? And are they going to stay there and
17 what is that programmer doing to try to get
18 them to stay there, because that's what it's
19 all about. They're trying to sell
20 advertising. They're trying to build
21 viewership and so on. I thought it was
22 important to do that.

1 JUDGE SIPPEL: Okay. Go ahead.

2 MR. TOSCANO: Thank you, Your
3 Honor.

4 BY MR. TOSCANO:

5 Q Mr. Egan, who selected the
6 programming that you analyzed?

7 A I selected it all.

8 Q And who created the categories
9 that you used to analyze the programming?

10 A I did.

11 Q And who actually analyzed the
12 programming schedules?

13 A I did, along with my colleague I
14 hired to work on this with me and I reviewed
15 his work.

16 Q And who tabulated the amounts of
17 programming in each category that you would
18 come up with?

19 A I did.

20 Q Now could you tell us what is the
21 difference between event and non-event
22 programming?

1 A Very simple, an event is a
2 competition and it's shown all or
3 substantially all of the competition. And
4 importantly, let me point out that it's not
5 necessarily live. I did do that distinction
6 and we can talk about that later, but in terms
7 of an event, it could be a taped event or it
8 could be a live event and conversely, a non-
9 event is a long-form, regularly scheduled
10 program that is not focused on a competition.
11 It's not showing you a competition.

12 Q You use the term long-form
13 programming, what do you mean by that?

14 A Those are 30 minute, 60 minute
15 programs that are regularly scheduled so that
16 a customer can make a point of viewing. You
17 know that Federal Premium Dangerous Game is on
18 at 8 o'clock on Friday night and I'm going to
19 tune to it and watch it.

20 Q Why did you analyze each networks'
21 long-form programming?

22 A Well, a couple of reasons. One is

1 that if you look at the amount of time that
2 these networks, quotes sporting networks,
3 devote to events and non-events, it's
4 radically different and its channel devotes
5 [REDACTED] of its air time to events, notably,
6 [REDACTED] percent of that is repeats. Either they
7 have previously aired or another television
8 channel aired before them.

9 In Versus' case, it's only a
10 little more than [REDACTED] percent of its air time is
11 devoted to events and Golf Channel's case it's
12 about [REDACTED]. It's very different right at
13 its face. So when a customer turns it on, the
14 odds of them running into an event are
15 radically different in each of those three
16 channels. So I think you've got to look at
17 non-events.

18 Number two is, non-event
19 programming is the channel's way of really
20 controlling and creating its channel and
21 telling the viewer this is who we are. This
22 is what we're all about and we hope you're

1 comfortable and you're going to stay here.
 2 You're going to make an appointment to come
 3 back.

4 Q Why did you analyze event
 5 programming?

6 A That's our -- the most popular,
 7 the most noted things that are on these three
 8 channels. They each carry, to different
 9 extents, some high-profile programming. And
 10 as I said, in Tennis Channel's case, it's
 11 really pretty much an event channel. I wanted
 12 to make sure I analyzed events.

13 Q And what do you conclude in your
 14 analysis of non-event programming on Golf
 15 Channel and Tennis Channel?

16 A Well, taking Golf and Tennis, for
 17 instance, what I concluded is, as I said
 18 earlier, that The Golf Channel focuses and
 19 puts a lot more resources behind non-event
 20 programming. More than [REDACTED] percent of its air
 21 time is filled with regularly scheduled, non-
 22 event programming. Again, as I said earlier,

1 Tennis Channel is a minority of time and in
2 fact, it's not even ■ percent of its air
3 time.

4 Then when you look within that,
5 what are these non-event shows and how many
6 are there? Golf Channel has far greater
7 variety of these shows, a far greater quantity
8 of non-event shows, far greater number of
9 episodes of each program series. It repeats
10 its program far less often than Tennis Channel
11 does. Has a greater variety of genres. And
12 I think, my opinion, it's a programming guide.
13 I think what they're trying to do there is
14 find a way to generate an audience beyond the
15 die-hard golfer, to try to put some things on
16 there that can attract or keep someone who may
17 not be a die-hard golfer.

18 JUDGE SIPPEL: Do you have an
19 example you can give?

20 THE WITNESS: Sure. Lots of
21 examples. So on Golf Channel they have a show
22 called Trump's Fabulous World of Golf.

1 JUDGE SIPPEL: Not the Trump I
2 know.

3 THE WITNESS: It's Donald Trump.
4 If he's the one you know, you're in good
5 company.

6 (Laughter.)

7 I won't talk about his politics.
8 So Donald Trump takes a couple of celebrities
9 out on one of his golf courses and it's a
10 reality show. Now reality is and has been the
11 hottest format in television. People seem to
12 love reality shows, right? And so I think
13 it's a smart move to do a reality show.

14 JUDGE SIPPEL: A reality show is
15 real? Are they like professional wrestling?

16 THE WITNESS: No, reality shows, I
17 think in that sense, Your Honor, are real. Of
18 course, they're edited. They don't just turn
19 the camera on you. So they're editing it. It
20 becomes unreal in that sense and that's a way
21 a lot of the drama is created, I think by the
22 show producers. But they are real. They're

1 not fabricating something like maybe a
2 wrestling match might be and I hope I'm not
3 shocking anybody to tell you that wrestling is
4 not necessarily real.

5 And so Trump takes two
6 celebrities, Mark Wahlberg, Kevin Dillon is
7 one episode I saw and they go out and they
8 compete and it's a lot of fun and kidding
9 around and they're raising money for charity
10 on this thing. They're doing a lot of things
11 there. One is Trump -- there's an affinity
12 between Trump and The Golf Channel. The Golf
13 Channel is an upscale, country club-ish Trump
14 kind of place, right? And so I think that's
15 smart. So -- and then of course, they're
16 using celebrities to bring in people who might
17 not -- who might say oh, I like Kevin Dillon.
18 I watch Entourage on HBO. Oh, he's on that
19 show. So I think that's a smart move.

20 Another reality show --

21 JUDGE SIPPEL: In that example, I
22 know you have several of them, that somebody

1 who really doesn't give that much about golf
2 would turn in to be able to see Donald Trump
3 walking around with these two people?

4 THE WITNESS: I think there are
5 some people who would do that, yes. And/or
6 the two celebrities who are on there, Kevin
7 Dillon and Mark Wahlberg. You may not watch
8 the show, the show on HBO called Entourage and
9 Kevin Dillon is one of the stars. It's a very
10 popular show.
11 Mark Wahlberg is a movie star.

12 JUDGE SIPPEL: He was The Fighter,
13 wasn't he?

14 THE WITNESS: Yes, exactly right.
15 Didn't that win an Academy Award? I don't
16 even remember.

17 Melissa Leo won it. I know that.
18 She was the mother in it.

19 JUDGE SIPPEL: You're ahead of me
20 there.

21 THE WITNESS: So another reality
22 show that they run is called Big Break. And

1 this is more golf oriented, but they take two
2 golfers who are trying to get on the tour and
3 the way you get on the tour is you get an
4 exemption to be able to play and they're
5 battling and whoever wins the match can be on
6 the tour. Again, they're using the reality
7 format.

8 Conversely, they run a show called
9 Golf Central which is live golf news, produced
10 an hour live every single day and in many,
11 many cases, I don't know if it's more than
12 half or not, but it could well be, they
13 produce a second hour live every day. And
14 golf news and golf context, very
15 authoritative, very much like Sports Center on
16 ESPN where you can tune in and boom in that
17 half hour you know everything going on in
18 golf.

19 Amazingly, I think for non-
20 golfers, it's a big world, a lot going on.
21 And so they're tracking what's going on maybe
22 while you were sleeping and they'll bring you

1 up to date on that. They'll tell you about
2 what's coming up. They'll tell you about
3 controversies and so forth. It's very
4 authoritative and that is an aspect of Golf
5 Channel that I think is important. They are
6 Golf Central. Well, that's the name of their
7 news show. It also works for the whole
8 channel. They're very authoritative. The
9 announcers on there, not only are many of them
10 personable, but you have a sense that they
11 come out of the golf world. They know what
12 they're talking about. They're not just on
13 there because they may be good looking. They
14 are on there because they are golf savvy.

15 Another indication of that is they
16 do this Live From. So during the Masters --
17 during the Majors, there's four golf Majors.
18 Golf Channel does not air any of the four
19 Majors, the tournament play itself. So what
20 they do is a wraparound called Live From and
21 for days, before and during the event, they
22 are live on that scene of that tournament like

1 the Masters. And they give you all the back
2 story, all the highlights, all of the intrigue
3 going on and believe it or not, I'm a casual
4 golfer, but I find it fascinating. During the
5 last Masters I thought that was riveting to
6 see this unfolding story of this young kid,
7 he's 21 coming up, he's leading. Can he hold
8 up under the pressure? Tiger Woods is coming
9 on. It's very interesting. And of course,
10 they do it in Golf Channel style. Their
11 personality is this upscale country club.

12 So the setting at the Masters is
13 in front of a fireplace. I don't know if he's
14 really at a Masters. He could be in their
15 studio, but it looks like they're in one of
16 the rooms of a clubhouse of the Masters,
17 Augusta. And that the golfers are probably
18 next door. And they're sitting around and
19 it's calm and it's mature and it's very
20 upscale and it's very
21 golf-y. So this is an example of the Golf
22 Channel.

1 Conversely --

2 JUDGE SIPPEL: Are there any women
3 in it?

4 THE WITNESS: They do have women
5 on The Golf Channel. It's overwhelmingly
6 dominated by male announcers and hosts. They
7 do have women and the women again are very,
8 very knowledgeable. Specifically, I'll tell
9 you about a woman named Kelly Tilghman, tall,
10 very athletic woman. I don't know whether
11 she's a former golfer. I'm sure there are
12 people in the room that do. She looks like
13 she could be. She's very athletic, very
14 attractive woman and she's dressed in sort of
15 a business casual look and she does -- she
16 hosts Live From at these Grand Slam events or
17 major events. She appears on Golf Central.
18 She'll even now and then host some of their
19 instructional programming. So she's all over
20 it and she really knows her stuff. And she's
21 very, you know, she's very friendly. You --
22 again, you feel like you're sort of in on the

1 inside on The Golf Channel. You joined the
2 club, if you will.

3 And in fairness, I have to say
4 Tennis Channel does run some non-event
5 programming. I don't want to say they don't.
6 They just run less of it. A smaller number of
7 genres. But they do run some instructional
8 programming. I'm not a big tennis player, but
9 I think the Tracy Austin Tennis Academy does
10 a nice job with production-wise if you're a
11 tennis player. They do a lot of stop action,
12 a lot of graphic stuff. I think it's well
13 done. I have no interest in it, but if you
14 are interested in the ATP World Tour, they
15 acquire -- it's a British-produced show and it
16 does sort of lifestyle and context on the ATP
17 Tour that week.

18 JUDGE SIPPEL: What is ATP?

19 THE WITNESS: That's one of the
20 tours, one of the sponsoring organizations
21 that runs a tour and it's a WTA, ATP, and they
22 are the parent organization and the players

1 are members of it and these tours organize the
2 different tournaments. And so the ATP has
3 tournaments throughout the year and the show
4 does sort of a wrap up.

5 It's also a lifestyle and content
6 show. It goes behind the scenes. It will
7 talk about -- I'm just making this an example.
8 I didn't see this, but they talk about what
9 Andre Agassi is doing off the court that week
10 during that tournament or maybe his family
11 life or something like that.

12 So they do acquire that show. I
13 say it's probably British or Australian
14 because it's done in voice over and the voice
15 clearly is not an American voice. So Tennis
16 Channel does do this, but again, it's just to
17 a lesser extent and certainly with a less
18 defined personality than I found on The Golf
19 Channel.

20 JUDGE SIPPEL: What do you mean
21 "defined personality"? Is that from the
22 viewer standpoint or from the performance

1 standpoint?

2 THE WITNESS: I think from the
3 viewer's standpoint. What impression you are
4 getting. As I say, in short, I would say with
5 The Golf Channel, you are entering the country
6 club. It's upscale. It's calm. Everybody is
7 authoritative and in charge. In my day,
8 growing up, I would have called them squares,
9 you know? They're not hip. They probably
10 don't let hip people in. And it's not risque.

11 JUDGE SIPPEL: There's a lot of
12 people you don't let in.

13 (Laughter.)

14 THE WITNESS: I guess there are.
15 The Golf Channel, conversely, comes off to me,
16 I think like tennis, sort of the brand of
17 tennis has become, and that is international,
18 very international. The hosts, many of the
19 hosts that are on the screen certainly for the
20 -- they run
21 -- interestingly, I think it's well done.
22 They run interstitial bits in amongst

1 tournaments. There will be a one minute or
2 two minute piece that is what I call an
3 interstitial drop in during a commercial break
4 and it will be a court report and they'll do
5 a little segment updating you on what's going
6 on in the -- let's say they're in Brisbane, so
7 it might be talking about what's going on in
8 Brisbane during this tournament. And they may
9 have hosts, I think her name is Arlene
10 Santana. She's a Latin-American woman and
11 she's young, probably in her early 20s, mid-
12 20s, or it could be a woman named Angela Sun,
13 Asian-American woman. So clearly they're, to
14 me,
15 they're communicating that tennis is an
16 international sport. It's a young sport.

17 JUDGE SIPPEL: Young in the sense
18 of what, that young people play it or that
19 it's only been around a little while?

20 THE WITNESS: That it's of
21 interest to younger folks, I think, is my
22 opinion.

1 JUDGE SIPPEL: What do you think
2 they're aiming at? I mean what age group --
3 what do you think The Tennis Channel wants --
4 what do you think they should be trying to
5 hit?

6 THE WITNESS: My opinion?

7 JUDGE SIPPEL: Yes.

8 THE WITNESS: What they should be
9 trying to hit? That I can't say, but it seems
10 to me from what I see that they're trying to
11 hit an 18 to 34, 18 to 49 audience is what
12 they're trying to hit, it seems to me. I
13 didn't do a study of that. But you're asking
14 my opinion and that's what it seems to me.

15 JUDGE SIPPEL: Do you think that
16 they're more interested in attracting viewers
17 who are women than say the golf?

18 THE WITNESS: Without question.
19 And I think that you see that by the amount of
20 or the number of women faces that are on
21 there. I think you see that by some of the
22 content.

1 Actually, one of the shows I
2 actually liked best that I watched is a show
3 called Best of Five and they do these
4 different topics. It's a documentary series.
5 And frankly, it's very well done. And one of
6 the shows that I'm referring to that I liked
7 was a fashion show and it talked about the
8 history of fashion in tennis which kind of --
9 I found interesting. And because it's a big
10 part of the game. Serena Williams designs her
11 own clothes. What Maria Sharapova wears is
12 always commented on, Kim Clijsters, all these
13 people. So they did a show on it and it was
14 extremely well done, well put together and
15 documentary, but not boring fashion. And I
16 liked that show. I think that show is
17 targeted to women, frankly.

18 JUDGE SIPPEL: That's on The
19 Tennis Channel?

20 THE WITNESS: That's on The Tennis
21 Channel.

22 JUDGE SIPPEL: Called Best of

1 Five.

2 THE WITNESS: Best of Five. It's
3 a series that documentary topics. The one I'm
4 talking about happened to be on fashion and
5 the history of fashion.

6 JUDGE SIPPEL: Do they make the
7 documentaries or do they buy them?

8 THE WITNESS: I don't know whether
9 they produce that show or they acquired it.
10 I don't know the answer to that.

11 JUDGE SIPPEL: Okay.

12 THE WITNESS: I think on some of
13 the other shows you also see the women thing
14 come out in just elements that they add on, so
15 they have one of these interstitials that I
16 mentioned where you'll be watching a
17 tournament, they go to a break. You see a
18 commercial. You see another commercial and
19 boom, rather than see maybe a promo for one of
20 their shows, you see something called Bag
21 Check, a 30 second or 60 second show in which,
22 it's fun. They open up a professional's bag

1 and they pull out to see what's in there.
2 They seem to choose the women more than the
3 men. It's interesting, I think, you see well,
4 what is someone carrying.

5 JUDGE SIPPEL: That's not reality
6 though, is it?

7 THE WITNESS: I think it's
8 entertainment. And again, in my opinion, it
9 skews to women to pull something out and
10 they'll talk about it. I think the men are
11 more interested in the tournament.

12 JUDGE SIPPEL: Why do you say
13 that?

14 THE WITNESS: I think my
15 experience, my personal experience, I think
16 that the men are more interested -- less
17 interested in maybe the hair brush that's in
18 the bag and more interested in what kind of
19 tennis racket is in the back. That's just my
20 opinion.

21 JUDGE SIPPEL: Hold on a second
22 there. What's -- I want to keep my thoughts

1 straight here. So that's an illustration of
2 seeming to attract women viewers. Why isn't
3 golf interested in that, too?

4 As I understand, women -- the way
5 the economy works, at least the consumer
6 economy works is that the women are
7 responsible for spending quite a bit more
8 money than men do. I think that's
9 statistically true. Is that true? Do we have
10 an economist in the house?

11 MR. SCHMIDT: I don't think we do,
12 but I think there's documents that say that.

13 JUDGE SIPPEL: I don't want to
14 document it. I don't want to mislead either.

15 MR. CARROLL: I actually think
16 that you can find documents inconsistent with
17 that, but maybe rather than the lawyers --

18 THE WITNESS: Okay. I think that
19 the -- for instance, Oxygen, if you're
20 familiar with the channel Oxygen.

21 JUDGE SIPPEL: Tell me about it.
22 I've heard of it.

1 THE WITNESS: Oxygen was started
2 by a woman named Geraldine Laybourne along
3 with Oprah Winfrey in 2000 and Oxygen's -- it
4 was, remains targeted to women. It's a
5 women's channel. I mention them because when
6 they started the channel, part of their pitch
7 was women hold the purse strings in the
8 households. I think it speaks to your point.

9 So assuming that's so, and I
10 wouldn't argue with it. I think that women do
11 control a lot of the discretionary income. I
12 think the thing about sports channels though
13 that's different and gets to your question of
14 why isn't golf doing more of that, appealing
15 to women thing, I think that the prototypical
16 sports channels, when looked at from an
17 advertiser, as an advertising vehicle, is
18 really trying to deliver purely to men,
19 because it's easier to get to women on
20 television. There's more things that women
21 watch. They just watch more television and
22 they watch more general interest television.

1 And so it's a harder task for an advertiser to
2 get at men. And sports channels, especially
3 a really prototypical sports channel, like a
4 Golf Channel or a Versus, Versus is very male-
5 oriented, an advertiser has the very efficient
6 vehicle to target right in on them.

7 JUDGE SIPPEL: Well, certainly men
8 watch tennis. I mean I'm not a marketing guy
9 or anything like that. There's money out
10 there to be had and why restrict it to the
11 male segment? Women play golf too.

12 THE WITNESS: Absolutely.

13 JUDGE SIPPEL: Pretty big golfers,
14 I understand. So it's kind of weird. I mean
15 I don't know.

16 THE WITNESS: I don't think it's
17 an either or. I mean in the same way that --
18 oh, I don't know. I can't think of another
19 channel off the top of my head. but there's
20 lots and lots of channels that -- take a
21 broadcast network. Broadcast networks try to
22 attract both men and women. That's the

1 vehicle they are to an advertiser. You can
2 buy it and depending on what you're trying to
3 do and the product you're trying to sell, a
4 mix of men and women may be what you're after.
5 Maybe you know, we're really not sure about
6 this, let's say a car. You want to sell cars.
7 Maybe that's a good place to be.

8 So there's nothing wrong with
9 being a gender balanced channel that delivers
10 a gender balanced demographic. I'm not in any
11 way criticizing that, but what I'm trying to
12 do is point out the differences among these
13 and when I look at the programming on Tennis
14 Channel and on Golf Channel, to me, what I'm
15 seeing on Golf Channel is a much more clubby,
16 male clubby-oriented personality than I'm
17 seeing on Tennis Channel and that's executed
18 through programming, interstitials, promos,
19 and that kind of stuff.

20 JUDGE SIPPEL: That's interesting
21 that you say it that way, clubby.

22 And what was the lady, that

1 athletic woman that was covering a Masters?

2 THE WITNESS: Kelly Tilghman, T-I-
3 L-G-H-M-A-N, I believe.

4 JUDGE SIPPEL: T-I-L --

5 THE WITNESS: G-H-M-A-N. Kelly
6 Tilghman.

7 JUDGE SIPPEL: Let me give you
8 this scenario and you -- I'd like to get your
9 reaction to this. It seems to me that you can
10 cover tennis events, you see it throughout the
11 world. I'm not saying it's easy, but it's
12 comparatively easy to put up a tennis court,
13 even a champion quality tennis court. Some
14 are clay. In France, they do it in clay.
15 They do everything different.

16 (Laughter.)

17 You got the hard surface. You got
18 the grass surface. That's England. They put
19 one up in D.C. and it's a pretty good
20 tournament. I think Volvo sponsors it. And
21 they have had some of the big names. Both men
22 and women come and play at that one.